IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12465 of 2002

with

SPECIAL CIVIL APPLICATION No 9661 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJKOT JILLA SAHAKARI DUDH UTPADAK SANGH LTD

Versus

RAJESH BHOVANBHAI SOLANKI

Appearance:

1. Special Civil Application No. 12465 of 2002
   PS GOGIA for Petitioner No. 1
   MR KISHOR M PAUL for Respondent No. 1
2. Special Civil Application No. 9661 of 2002
   MR KISHOR M PAUL for Petitioner No. 1
   Mr.PS Gogia for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 02/09/2004

ORAL JUDGEMENT

1.1 These two cross petitions, namely, Special Civil Application no.12465 of 2002 is preferred by the petitioner-Dairy while Special Civil Application no.9661 of 2002 is preferred by the workman against the same judgment and award passed by the Labour Court, Rajkot,dated 27-9-2001 in Reference (LCR) no.248 of 1989 whereby the Labour Court ordered reinstatement of the workman with continuity of service and 25% back wages.

1.2 Since both the petitions arise from the same judgment they are heard together and are being disposed of by this common judgment.

2.1 In Special Civil Application no.12465 of 2002 the petitioner-Dairy has prayed for a direction quashing and setting aside the judgment and award of the Labour Court. In Special Civil Application no.9661 of 2002 the petitioner-workman has prayed for a direction to the respondent-Dairy to pay 100% back wages alongwith consequential benefits for intervening period of pending Reference before the Labour Court.

3,1 It is the case of the petitioner-Dairy of Special Civil Application no.12465 of 2002 that the respondent-workman was employed as a badli worker for a fixed period on purely temporary basis with the petitioner-Dairy with effect from 18-10-1985 and was assigned the work of sweeper and orders specifying fixed periods were issued to the respondent workman. Thereafter various agreements between the petitioner-dairy and the respondent workman in respect of the fixed periods of service ranging from 1-5-1987 to 28-11-1988 were executed and the respondent was given casual work for these fixed periods, against which there was no protest by the respondent-workman. The services of the respondent-workman came to be discontinued from 28-11-1988 after the expiry of the fixed period of the last agreement dated 1-11-88.

3.2 Thereafter, the respondent lodged a complaint before the Assistant Labour Commissioner, Rajkot, and ultimately, the dispute on being referred to the Labour Court under Reference (LCR) no.248 of 1989, the Labour Court after appreciating the materials placed before it

came to the conclusion that the workman is entitled to reinstatement in service in view of Sections 25 (F) and (G) of the Industrial Disputes Act, Accordingly, the Labour Court ordered reinstatement of the respondent-workman with continuity of service and 25% back wages, and hence, Special Civil Application no.12465/2002.

4.1 In Special Civil Application no.9661 of 2002, it is the case of the petitioner-workman that he was serving as a Safai Kamdar (Sweeper) for more than three years in the services of the respondent-Dairy and he was illegally removed from service without giving him any notice. According to the petitioner-workman, the Labour Court had not considered the fact that the petitioner was not gainfully employed during the intervening period pending Reference before the Labour Court. The petitioner has averred in the petition that the part of the Labour Court ordering only 25% back wages to the petitioner is bad in law, and hence, Special Civil Application no.9661/2002 seeking a direction for 100$ back wages.

5.1 Mr. Gogia, learned Counsel for the petitioner of Special Civil Application no.12465/2002 has contended that the respondent-workman was employed on a contract basis, and therefore, it is not a case of retrenchment. It is also contended by Mr. Gogida that this being not a case of retrenchment the provisions of Section 25 (G) and (H) will not apply to the petitioner-Dairy.

6.1 On a bare perusal of the document produced at Annexure "B" to the petition, it becomes clear that various agreements of different dates ranging from 14th May, 1987 to 1st November,1988 were signed and executed between the petitioner-Dairy and the respondent-workman, while the respondent-workman was already in service from 1st May, 1987 and continued upto 28the November, 1988. Thus, the agreements were executed subsequently which amounts to unfair labour practice by the petitioner-Dairy,- a statutory authority registered under the Gujarat Co-operative Societies Act. In that view of the matter, I find that the respondent workman having been illegally retrenched from the services of the petitioner-Dairy, after having worked for almost three years, there is a breach of provisions of Section 25 (G) and (H) of the I.D.Act by the petitioner-Dairy.

6.2 The action of employer is against public policy and the same is done to avoid statutory liabilities which is not permissiable.

7.1 Mr.Paul, learned Counsel for the respondent-workman while contending that the Labour Court ought to have granted 100% back wages instead of 25% back wages as awarded, has drawn my attention to the observations made by the Honourable the Apex Court in the case of CENTRAL BANK OF INDIA V. S SATYAM AND OTHERS reported in AIR 1996 SC 2526 wherein at paras 9 and 10 of the judgment, it has been held that:

> "Chapter V-A of the Act providing for retrenchment is not enacted only for the benefit of the workmen to whom Section 25-F applies but for all cases of retrenchment and, therefore, there is no reason to restrict application of Section 25-H therein only to one category of retrenched workmen. Therefore, restricted meaning cannot be given to the word "retrenchment" in Section 25-H. Section 25 H is couched in wide language and is capable of application to all retrenched workmen, not merely those covered by Section 25-F. It does not require curtailment of the ordinary meaning of the word `retrenchment used therein. The provisions of re-employment of retrenched workmen merely gives preference to a retrenched workman in the matter of re-employment over other workmen and there is no reason to restrict its ordinary meaning which promotes the object of the enactment without causing any prejudice to a better placed retrenched workman."

7.2 Having regard to the ratio laid down by the Honourable the Apex Court in the aforesaid decision, it is clear that Section 25-H of the Industrial Disputes Act is applicable to all retrenched workmen. I am, therefore of the view that the Labour Court is perfectly justified in passing the order under challenge. No illegality is pointed out by the learned Counsel for the petitioner-Dairy calling for my interference in these two Special Civil Applications. The claim of the respondent-workman in respect of 100% back wages, instead of 25% back wages ordered by the Labour Court, for the interim period pending Reference is disallowed.

8.1 In the result, both these petitions fail and are hereby dismissed. Rule is discharged in each of these petitions. The petitioner-Dairy is directed to comply with the award of the Labour Court dated 27-9-2001 passed in Reference (LCR) no.248 of 1989 within fifteen days from today.

(K.S.Jhaveri,J.)

stanley-ksj.